

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2728 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF RAMANDAS VADHUMAL

Versus

SECRETARY

Appearance:

MISS KALPANA R SHAH for Petitioners
MR.V.M. PANCHOLI, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/07/1999

ORAL JUDGEMENT :

By this petition under Articles 226 and 227 of the Constitution of India, the petitioners, heirs of Ramandas Vadhumal, original allottee have challenged the judgment and order dated 16.12.1985 of the Secretary, Revenue Department (Appeals) of the State of Gujarat, confirming the order dated 12.9.1984 of the the Collector, Junagadh, fixing rent of the premises in

question (being three rooms at village Batwa, Taluka Manvadar in the then district Junagadh) at Rs.230.00 per month.

2. It appears that the property in question was an evacuee property and the present petitioners' father, Ramandas Vadhmal having migrated from Pakistan to India was allotted the aforesaid property as a tenant. The original allottee was required to pay rent of Re.1-00 per room and at that rate Rs.3.00 per month. Subsequently, by order dated 16.3.1978 the Collector fixed rent of the premises at the rate of Rs.230.00 per month with effect from 1.2.1978. The petitioner's Revision Application against the said order was allowed by the Secretary (Appeals) on 24.12.1978 after observing that the allottee was not given any opportunity of being heard before fixing rent and also on the ground that the rent fixed by the Collector appeared to be very excessive. Pursuant to the said order of remand, the Collector gave the allottee an opportunity of being heard. At the said hearing, the original allottee contended that the rent could not be more than Rs.60.00 per month and the Collector referred to the report of the Executive Engineer and observed that looking to the location of the land the prices of the surrounding lands, plinth area and other relevant considerations, the rent was fixed at Rs.230.00 per month and that in view of the expert opinion of the Executive Engineer, fixation of the rent at Rs.230.00 per month was proper. The petitioner carried the matter again in revision before the Secretary, Revenue Department (Appeals). By the impugned order, the Secretary confirmed the order of the Collector. Therefore, the petitioners, the heirs of the deceased allottee, have filed the present petition.

3. While admitting this petition, this Court granted interim stay against implementation of the impugned orders on the condition that the petitioners shall deposit arrears of rent at the rate of 50 per cent and shall further deposit rent at the rate of Rs.115.00 per month with the concerned authority. At the hearing of this petition learned counsel for the petitioner states that the aforesaid condition has been complied with though for the last two years the Collector has not been accepting the rent at the aforesaid rate.

4. Learned counsel for the petitioners has submitted that the Collector had not referred to any specific evidence or material to justify increase of rent from Rs.3.00 to Rs.230.00 per month and that the Secretary had also on an earlier occasion remanded the matter in the

year 1978 on this very ground after observing that the rent fixed by the Collector was very excessive. However, even after remand, the Collector did not refer to any specific material nor was the petitioner given any opportunity to deal with such material and the rent has been fixed arbitrarily. The learned counsel further submitted that the petitioner had purchased the land in the nearby area at a price only of Rs.1250.00, which was much larger than the disputed premises in question. A reference in this connection is made to the document, i.e. certificate of sale (freehold property) issued by the Managing Officer, Bombay in respect of EP Shop no.36 at Batwa. The price mentioned is Rs.1250.00. It is further stated that for the land near the premises in question, which is also the Government land, the tenants are paying rent at the rate of Rs.15.00 per month as per the certificate issued by the Nagar Panchayat dated 1.8.1983. A reference is also made to the Government Resolution stating that the rent should be fixed at the rate of Rs.6.00 per month of the market value.

5. On the other hand Shri Pancholi, learned AGP for the respondents has submitted that the Collector has fixed rent after taking into consideration the report of the Executive Engineer where all the relevant factors were taken into account. The premises in question are in the main street of the village and that the rent cannot be as low as Rs.60.00 as suggested by the petitioners. Shri Pancholi, learned AGP has further submitted that in any view of the matter this Court would not sit in appeal over the decision of the Collector fixing the rent of any premises in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. Having heard the learned counsel for the parties it appears to the Court that while this Court will certainly not sit in appeal over the decision of the Collector fixing rent of the premises, but the order passed by the Secretary (Appeals) on 22.12.1978 (Annexure 'F' to this petition) cannot be overlooked where the Secretary had clearly mentioned that the rent fixed by the Collector was very excessive and hence the demand made by the Collector calling upon the petitioner to pay arrears of rent at the rate of Rs.230.00 per month with effect from 1.2.1978 cannot be sustained. However, it is required to be noted that the subsequent order of the Collector is passed after six years. Looking to the inflationary trend in the mid- 1980s and early 1990s, and considering the fact that the rent was fixed by the Collector on the basis of the opinion of the Executive Engineer (which of course, cannot be considered as final

and conclusive for all purposes and under all circumstances) nevertheless, having regard to the fact that a public officer has fixed rent after considering the location of the premises, this Court would not interfere with the fixation of rent at the rate of Rs.230.00 per month, but the said fixation shall be confined for the period after the date of the order of the Collector, i.e. with effect from 12.9.1984. For the convenience of calculation, the date shall be taken as 1.9.1984.

7. Another aspect highlighted by the learned counsel for the petitioner is that no repairs have been carried out to the rented premises. This fact was also referred to in the Deputy Collector's order dated 29.9.1976 (Annexure 'C' to the petition), when the dispute was as to whether the petitioner had put up any unauthorised construction on the land in question. It is submitted that by now the premises have become dilapidated and are, therefore, in need of urgent repairs. Hence a part of the amount of arrears of rent payable by the petitioners towards rent for the period from 1.9.1984 onwards may be permitted to be adjusted against repairs which are required to be carried out and that the petitioners are ready and willing to carry out repairs themselves so that the same can be done expeditiously at a reasonable cost.

8. Learned AGP has however, submitted that first the petitioners should be required to deposit the arrears of rent and thereafter the authorities will carry out repairs.

9. However, looking to the fact that the premises have not been repaired for a number of years in the past and taking judicial notice of the time and manner in which the authorities carry out repairs to the public properties in occupation of private persons, the request made by the petitioners does not seem to be unreasonable.

10. In view of the above discussion, the following order is passed :

The order passed by the Collector on 12.9.1984 (Annexure 'G' to the petition) confirmed by the order of the Secretary, Revenue Department (Appeals) dated 5.3.1986 (Annexure 'I' to the petition) is confirmed with the modification that the rent at the rate of Rs.230.00 per month shall be payable by the petitioners with effect from 1.9.1984 (the date nearest to the order of the Collector i.e. 12.9.1984) and arrears of rent paid by the petitioners for the period upto 31.8.1984 at

Rs.115.00 per month shall be treated as rent for the period upto 31.8.1984. In other words the petitioners shall be liable to pay monthly rent at the rate of Rs.230.00 only with effect from 1.9.1984 and the arrears of difference of rent will be paid on that basis within the period of six months from today in two equal instalments.

The first instalment shall be paid within two months from today. It would be open to the petitioners to carry out repairs to the premises in question at their own cost and to get the same adjusted against the second instalment payable by the petitioners. However, before the amount of repairs is so adjusted the petitioners shall furnish all the details of repairs and expenses to the Collector, who shall get the same examined by the Executive Engineer and the amount so certified by the Executive Engineer shall be treated as the cost of repairs to be adjusted against the second instalment. To enable the Executive Engineer to undertake this exercise, the petitioners shall not commence the repairs for a period of one month from the date of the service of the writ of this Court or the certified copy of this judgment, whichever is earlier, during which period it will be open to the Executive Engineer or his representative to inspect the existing condition of the premises in question.

11. The petition is accordingly disposed of in the aforesaid terms. Rule is made absolute to the aforesaid extent only with no order as to costs.

Direct service is permitted.

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